

TTAB



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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

429

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GALLEON S.A., :
BACARDI-MARTINI U.S.A., INC. :
and BACARDI & COMPANY LIMITED, : Cancellation No. 24,108

Petitioners :

v. :

HAVANA CLUB HOLDING, S.A. and :
HAVANA RUM & LIQUORS, S.A. :
d/b/a H.R.L., S.A. :

Respondents. :

-----X

REPLY TO PARTIAL OPPOSITION TO PETITIONERS'
MOTION FOR EXTENSION OF TIME
TO FILE A RESPONSE TO RESPONDENTS' MOTION FOR SUMMARY JUDGMENT
DISMISSING THE PETITION AND FOR OTHER RELIEF

Petitioners respectfully submit the attached Affidavit of William R. Golden, Jr.
dated December 16, 1996 in reply to Respondents' Partial Opposition to Petitioners' Motion
for Extension of Time to File a Response to Respondents' Motion for Summary Judgment
Dismissing the Petition and for Other Relief in the above-captioned proceeding.

For all of the reasons set forth in said Affidavit as well as previously herein,
Petitioners respectfully request that their Motion be granted.

Dated: New York, New York
December 16, 1996

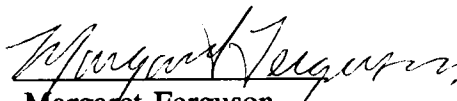
KELLEY DRYE & WARREN
Attorneys for Petitioners
GALLEON S.A.,
BACARDI-MARTINI U.S.A., INC. and
BACARDI & COMPANY LIMITED

By: Margaret Ferguson
William R. Golden, Jr.
Margaret Ferguson
101 Park Avenue
New York, New York 10178
(212) 808-7800

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing REPLY TO PARTIAL OPPOSITION TO PETITIONERS' MOTION FOR EXTENSION OF TIME TO FILE A RESPONSE TO RESPONDENTS' MOTION FOR SUMMARY JUDGEMENT DISMISSING THE PETITION AND FOR OTHER RELIEF has been served upon Respondents' attorneys, Michael Krinsky at Rabinowitz, Boudin, Standard, Krinsky & Lieberman, P.C., at 740 Broadway, 5th Floor, New York, New York 10003 the address designated by said attorney for that purpose by depositing a true copy thereof with the United States Postal Service as first-class mail on December 16, 1996.

Dated: December 16, 1996

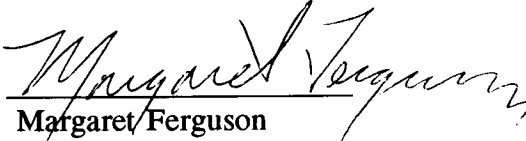

Margaret Ferguson

CERTIFICATE OF MAILING

Express Mail, Mailing No. EG1795844054 S

Date of Deposit December 16 1996

The undersigned hereby certifies that the foregoing paper is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to the Box TTAB NO FEE, Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513.


Margaret Ferguson

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

GALLEON S.A.,
BACARDI-MARTINI U.S.A., INC., and
BACARDI & COMPANY LIMITED,

Petitioners,

- against -

HAVANA CLUB HOLDING, S.A., and
HAVANA RUM & LIQUORS, S.A. d/b/a
H.R.L., S.A.,

Respondents.

Registration No. 1,031,651

Cancellation No.: 24,108



AFFIDAVIT OF WILLIAM R. GOLDEN, JR.

William R. Golden, Jr. being duly sworn, deposes and says;

1. I make this Affidavit in reply to the Partial Opposition to Petitioners' Motion for Extension of Time To File A Response to Respondents' Motion for Summary Judgment Dismissing the Petition for Other Relief and the accompanying Affidavit of Caroline Rule, dated December 9, 1996 submitted in connection with this proceeding.

2. On November 25, 1996, I asked my associate, Margaret Ferguson, to make an initial phone call to opposing counsel for the purpose of requesting an extension of time until December 23rd. I told Ms. Ferguson to raise the fact of my oral argument before the Court of Appeals for the Federal Circuit, which at the moment of my conversation with

Ms. Ferguson was the most pressing matter on my mind. I did not necessarily consider the request for an extension until the 23rd to be the last extension request although I hoped we could be done before the holidays for personal reasons. Nor did I anticipate that there would be any difficulty in opposing counsel granting the request for an extension as, in accordance with my long-established practice, I had previously granted their extension requests and had indicated a willingness to grant any such reasonable future requests.

3. My understanding is that on the 25th, Ms. Ferguson spoke to Caroline Rule, one of Respondents' attorneys, and relayed the request. She was told by Ms. Rule that it would be taken under advisement.

4. Ms. Ferguson again spoke with Ms. Rule on November 26th and explained that given the upcoming Thanksgiving holiday, it was important to have a response as soon as possible. Ms. Rule said she had not as yet been able to speak to Mr. Krinsky and therefore was unable to respond but expected she would shortly.

5. Several times on the morning and afternoon of November 27th, Ms. Ferguson--not having received a response--tried to reach opposing counsel unsuccessfully. I also called Ms. Rule and Mr. Krinsky on the afternoon of the 27th but they had left for the holiday. Ms. Ferguson later left a message for Ms. Rule or Mr. Krinsky, whoever became available first, that we were anticipating proceeding by way of motion relating to the extension request.

6. At approximately 11:00 a.m. on November 27th, Ms. Rule sent a letter to Ms. Ferguson's home facsimile number which letter was attached to our Motion. Ms. Ferguson did not discover the fax until Sunday, December 1st. She brought it to my attention the following day.

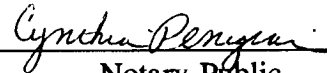
7. The letter from Ms. Rule appeared to state counsel's final position, so it seemed futile to discuss the motion further. Had either Ms. Ferguson or I been able to speak with opposing counsel, we would have asked them to reconsider their refusal to consent in light of all the reasons set forth in my previous Affidavit submitted with our December 3, 1996 motion for an extension of time. We did not, however, have that opportunity, and since we were forced to move, wanted to make sure we had enough time to respond adequately in light of all the difficulties then existing. Unfortunately, this meant work over the holidays.


William R. Golden, Jr.

ACKNOWLEDGMENT

STATE OF NEW YORK)
 : SS:.
COUNTY OF NEW YORK)

On the 16th day of December, 1996, before me personally came William R. Golden, Jr., to me known, to be the individual described in and who executed the foregoing instrument and acknowledged that he executed the same.



Notary Public

CYNTHIA M. PENIGIAN
NOTARY PUBLIC, State of New York
No. 01PE5051607
Qualified in Queens County
Commission Expires Nov. 6, 1997

KELLEY DRYE & WARREN LLP

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December 16, 1996

Box TTAB NO-FEE

Assistant Commissioner for

Trademarks

2900 Crystal Drive

Arlington, Virginia 22202-3513

Re: GALLEON S.A., BACARDI-MARTINI U.S.A., INC.
and BACARDI & COMPANY LIMITED v. HAVANA CLUB
HOLDING, S.A. and HAVANA RUM & LIQUORS, S.A.
d/b/a H.R.L., S.A. -- Cancellation No. 24,108

Dear Sir or Madam:

On behalf of Petitioners, Galleon, S.A., Bacardi-Martini U.S.A, Inc. and Bacardi & Company Limited, we enclose a Reply to Partial Opposition to Petitioners' Motion for Extension of Time to File a Response to Respondents' Motion for Summary Judgment Dismissing the Petition and for Other Relief.

Please acknowledge receipt of same on the enclosed postcard.

Very truly yours,

Margaret Ferguson

MF:mc

Enclosures